

State Legislation Monitoring Report:

FY2013

Iowa Department of Human Rights
Division of Criminal and Juvenile Justice Planning
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I. Introduction

The Division of Criminal and Juvenile Justice Planning (CJJP) issued its first state legislation monitoring report in February, 2002, covering the first six months' impact of Senate File 543 (which enacted a number of sentencing changes) on the justice system; monitoring of the correctional impact of this bill was at the request of several members of the legislature. Since then, the Criminal and Juvenile Justice Planning Advisory Council has requested that CJJP monitor the correctional impact of enacted legislation of particular interest. This report covers monitoring results or future plans to monitor the following:

- Synthetic Drugs
- Aggravated theft
- Residential treatment backlog
- 70% crimes
- Enhanced penalty for domestic abuse assault involving strangulation
- Recidivism study based on the Anderson ruling
- Changes to the purpose or possession of child pornography
- DNA Hits
- Interference with official acts

II. Synthetic Drugs

During the 2011 session of the Iowa General Assembly, action was taken to add synthetic cannabinoids (such as K2), Salvia Divinorum, and synthetic cathinones ("bath salts") to Iowa's list of Schedule I Controlled Substances (substances having no known medicinal properties). These changes were accomplished by language in two different bills, Senate File 510 and Senate File 533. Synthetic cannabinoids became Schedule I controlled substances under Iowa law and criminal penalties for violations took effect on July 29, 2011. The two other substances – Salvia Divinorum and "bath salts" (synthetic cathinones) – became Schedule I controlled substances 30 days after the enactment of the latter of the two bills (SF 510 and SF 533). Though there was some debate as to when the criminal penalties for distribution and possession of Salvia Divinorum and "bath salts" took effect, it is clear that on September 27, 2011, (and possibly 30 days earlier) distribution and possession of Salvia Divinorum or "bath salts" became prohibited and criminal penalties began to apply.

Emergency rules were adopted July 8, 2013 to match federal action and add 3 more synthetic cannabinoids as Schedule I Controlled Substances in Iowa. Effective November 15, 2013 at the federal level, the DEA emergency scheduled 3 additional synthetic *phenethylamines*. The Iowa Pharmacy Board has not decided what, if any, action it will take or seek on these.

The coding structure used by the Courts will not capture charges and convictions for the specific drugs involved in violation of Iowa Code 124.401(1)(d). Therefore, the decision was made to track hospitalizations and emergency room visits for drug poisoning as a proxy measure. The hypothesis is that the number of accidental poisoning events will decrease once these drugs are no longer available through retail outlets. The data are from the Iowa Department of Public Health (IDPH), and include diagnostic and external cause codes for poisoning by sedative, hypnotics, psychotropic agents, hallucinogens, psychostimulants, and other psychotropic agents.

There was a data error in the number of 2011 hospitalization. This figure has been corrected. Data for hospitalizations and emergency room visits for accidental drug poisoning were only available through calendar 2012. Data indicate that accidental poisoning hospitalizations as a result of substance use have been fairly steady from 2006-2012 but ER visits have substantially increased over the years. Both ER visits and hospitalizations experienced a stark increase in 2011 but decreased by 2012.

Table 1: Accidental Poisonings Resulting in Hospitalizations and ER Visits

| ACCIDENTAL POISONS (ENCODE) | | | | | | |
|-----------------------------|-------------------------------|---|---------------|-------------------------------------|---|---------------|
| CY | HOSPITALIZATIONS (In-Patient) | | | EMERGENCY ROOM VISITS (Out-Patient) | | |
| | Substance Use Diagnosis | Accidental Poisoning as a Result of Substance Use | Total | Substance Use Diagnosis | Accidental Poisoning as a Result of Substance Use | Total |
| 2006 | 1,560 | 84 | 1,644 | 5,124 | 204 | 5,328 |
| 2007 | 1,784 | 87 | 1,871 | 5,564 | 201 | 5,765 |
| 2008 | 1,898 | 99 | 1,997 | 5,949 | 230 | 6,179 |
| 2009 | 2,071 | 101 | 2,172 | 5,993* | 273 | 6,266 |
| 2010 | 2,123 | 109 | 2,232 | 884 | 265 | 1,149 |
| 2011 | 2,028 | 140 | 2,168 | 997 | 324 | 1,321 |
| 2012 | 1,895 | 109 | 2,004 | 1,028 | 282 | 1,310 |
| Total | 13,359 | 729 | 14,088 | 25,539 | 1,779 | 27,318 |
| Average | 1,908 | 104 | 2,013 | 3,648 | 254 | 3,903 |

Figure 1: Accidental Poisonings Resulting in Hospitalizations and ER Visits, by Calendar Year

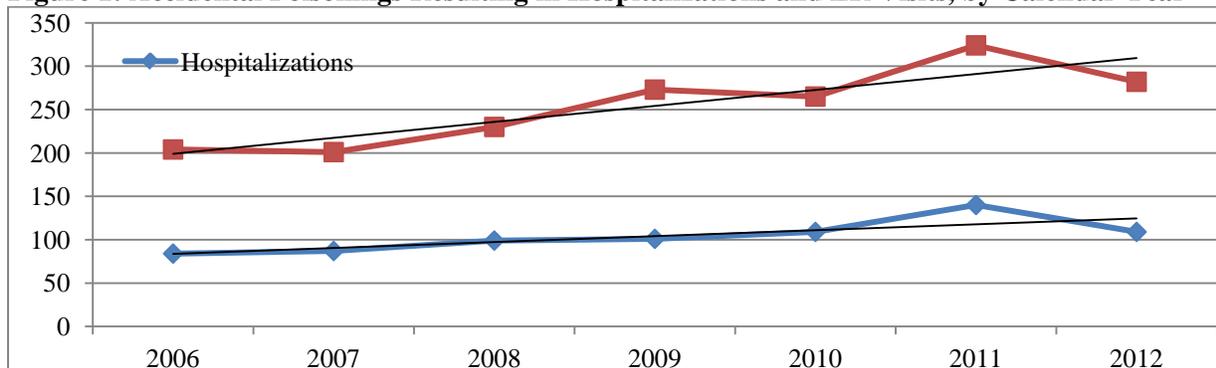


Table 2: Accidental Poisonings as a Result of Substance Use by Age

| ACCIDENTAL POISONS AS A RESULT OF SUBSTANCE ABUSE BY AGE (ENCODE) | | | | | | | | |
|---|-------------------------------|-----------|------------|------------|------------------------------|-----------|------------|------------|
| CY | HOSPITALIZATIONS (In-Patient) | | | | EMERGENCY ROOM (Out-Patient) | | | |
| | Missing | Youth | Adult | Total | Missing | Youth | Adult | Total |
| 2010 | 8 | 10 | 82 | 100 | 91 | 33 | 141 | 265 |
| 2011 | 18 | 10 | 113 | 141 | 119 | 30 | 159 | 308 |
| 2012 | 13 | 3 | 93 | 109 | 97 | 25 | 160 | 282 |
| Total | 39 | 23 | 288 | 350 | 307 | 88 | 460 | 855 |
| Average | 13 | 8 | 96 | 117 | 102 | 29 | 153 | 285 |

Additional information provides a breakdown of accidental poisoning hospitalizations and emergency room visits as a result of substance use by age, identifying individuals under 18 years old as youth and individuals over 18 as adults. The total numbers may not match previously-reported figures because when the numbers are categorized by age some values are lost in the categorization. Hospitalizations and Emergency Room visits have decreased for youth, while adult figures tend to

* IDPH indicates that the decrease in ER visits involving substance use diagnoses was attributable to a change in the way the Iowa Hospital Association was collecting and storing data. The previously used method had the potential for inflation, as diagnoses might have been counted more than once per patient.

fluctuate.

Another source of information on this topic is the statewide Poison Control Center located in Sioux City. Health care facilities can contact the Poison Control Center (although they are not required) if they have inquiries about synthetics or would like guidance and recommendations related to patient treatment for synthetic drug use. Because the Poison Control Center is used as an information resource, the figures presented below provide a good estimate of treatment consultations, not actual incidents of drug use.

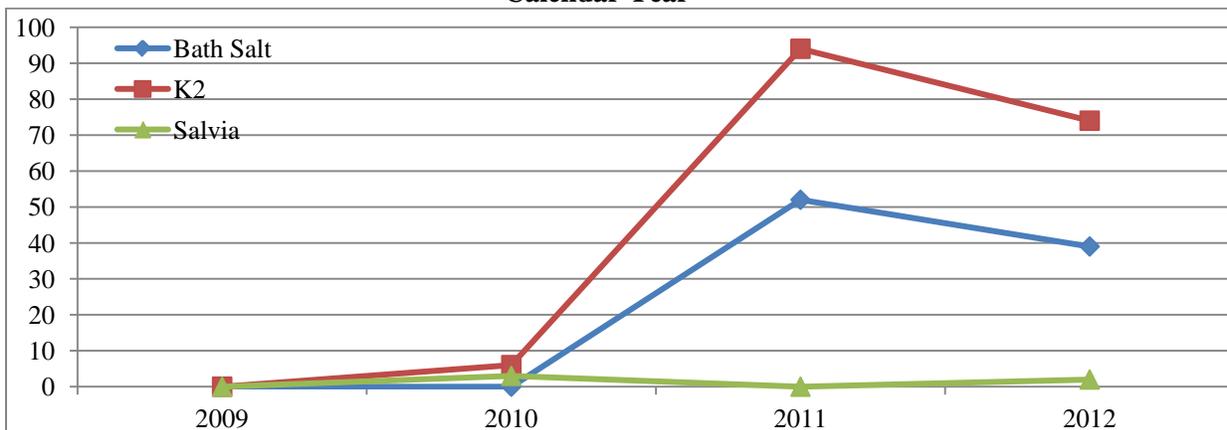
The following chart is based upon voluntary calls placed by health care facilities concerning patient treatment for bath salts, K2, and salvia. Salvia treatments have remained relatively low and stable from 2009-2012, while treatments for bath salts and K2 have followed similar patterns, increasing from 2010-2011 and slightly declining in 2012.

The data for the first six months of CY2013 show roughly one-seventh the number of calls and one-eighth the number of treatments for bath salts and one-fourth the number of calls and treatments for K2 as reported in CY2012. This would suggest that the number of calls and treatment in CY2013 for bath salts and K2 will likely be lower than in previous years, while Salvia calls and treatments are expected to remain low and stable. More time needs to elapse in order to draw conclusions from this measure as well.

Table 3: 2009-2013 Iowa Poison Control Center Health Care Facility Calls and Treatment

| | Bath Salts | | K2 | | Salvia | |
|-------------------|------------|-----------|---------|-----------|---------|-----------|
| | #Calls | # Treated | # Calls | # Treated | # Calls | # Treated |
| CY2009 | 0 | 0 | 0 | 0 | 1 | 0 |
| CY2010 | 0 | 0 | 6 | 6 | 3 | 3 |
| CY2011 | 57 | 52 | 91 | 94 | 0 | 0 |
| CY2012 | 41 | 39 | 76 | 74 | 2 | 2 |
| CY2013 (Jan-July) | 6 | 5 | 21 | 19 | 0 | 0 |
| Total | 104 | 96 | 194 | 193 | 06 | 05 |

Figure 2: 2009-2013 Iowa Poison Control Health Care Facility: Bath Salt, K2, and Salvia by Calendar Year



III. Aggravated Theft

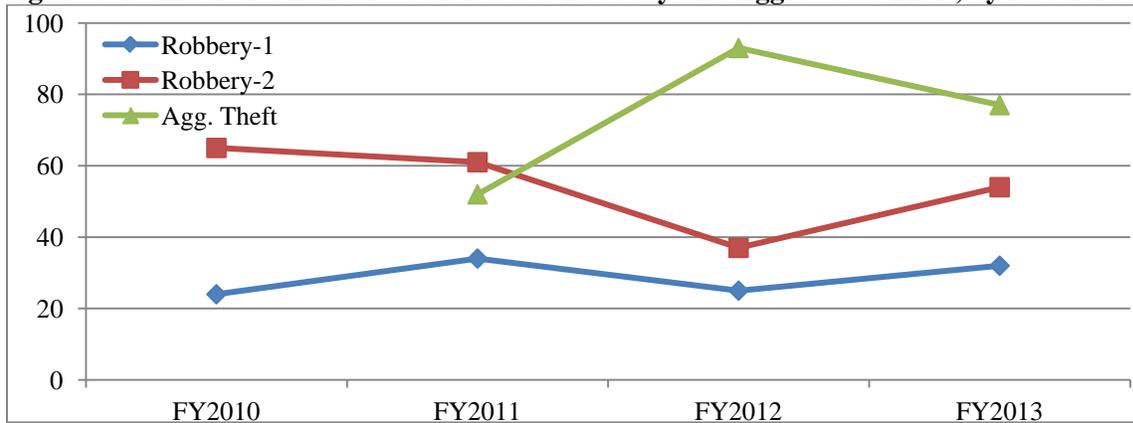
During the 2010 legislative session, the General Assembly created a new theft charge, aggravated theft (Iowa Code §714.3A). This offense, an aggravated misdemeanor, was intended to be an alternative, non-forcible charge for acts of theft combined with low-level physical threat. Prior to the passage of this amendment, offenders could be charged with first-degree robbery, a Class B forcible felony with a 70% sentence. Robbery 2nd, a Class C 70% crime, was also a charging/convicting offense that could be used. Anecdotal information indicated that some jurisdictions, in these instances, also used theft 5th in combination with simple assault, two simple misdemeanor offenses. Another charging/conviction alternative suggested by Criminal and Juvenile Justice Advisory Council members was Iowa Code §711.4, extortion, a Class D felony.

Data were examined for FY2010, the year before §714.3A was enacted, and FY2011 through FY2013. Charges and convictions for robbery 1st, robbery 2nd, and aggravated theft were obtained from the Iowa Justice Data Warehouse (JDW). In addition, offenders who were convicted of the theft 5th/simple assault combination during the three years were also identified. The data in the chart figures have been updated from prior years.

Table 4: Charges and Number of Offenders Convicted, Robbery and Aggravated Theft

| | FY2010 | | FY2011 | | FY2012 | | FY2013 | |
|-------------------------|-----------|-------------|-----------|-------------|-----------|-------------|-----------|-------------|
| | # Charges | # Convicted |
| Robbery 1 st | 264 | 24 | 254 | 34 | 251 | 25 | 315 | 32 |
| Robbery 2 nd | 320 | 65 | 223 | 61 | 247 | 37 | 219 | 54 |
| Aggravated Theft | NA | NA | 74 | 52 | 129 | 93 | 112 | 77 |
| Total | -- | -- | 551 | 147 | 627 | 155 | 646 | 163 |

Figure 3: Number of Offenders Convicted of Robbery and Aggravated Theft, by Fiscal Year



African-Americans accounted for at least half of all robbery 1st convictions for each of the four fiscal years presented in the table below. The percentage of African-Americans convicted of robbery 2nd was greater than the percentage of whites in FY2010, FY2011, and FY2013 but lower in FY2012.

The total number of convictions for aggravated theft nearly doubled in FY2012 but declined in FY2013. The racial distribution for FY2011, FY2012 and FY2013 were similar, with a greater percentage of whites convicted of aggravated theft compared to African-Americans. While African-Americans are over-represented in each of the three crimes, the over-representation is much greater

for the two robbery offenses.

Table 5: Offenders Convicted of Robbery-1, by Race

| | FY2010 | | FY2011 | | FY2012 | | FY2013 | |
|--------------------|--------|-------|--------|-------|--------|-------|--------|-------|
| | # | % | # | % | # | % | # | % |
| White | 9 | 37.5% | 8 | 23.5% | 7 | 28.0% | 9 | 28.1% |
| African-American | 12 | 50.0% | 20 | 58.8% | 13 | 52.0% | 18 | 56.2% |
| Other [†] | 3 | 12.5% | 6 | 17.6% | 5 | 20.0% | 5 | 15.6% |
| Total | 24 | 100% | 34 | 100% | 25 | 100% | 32 | 100% |

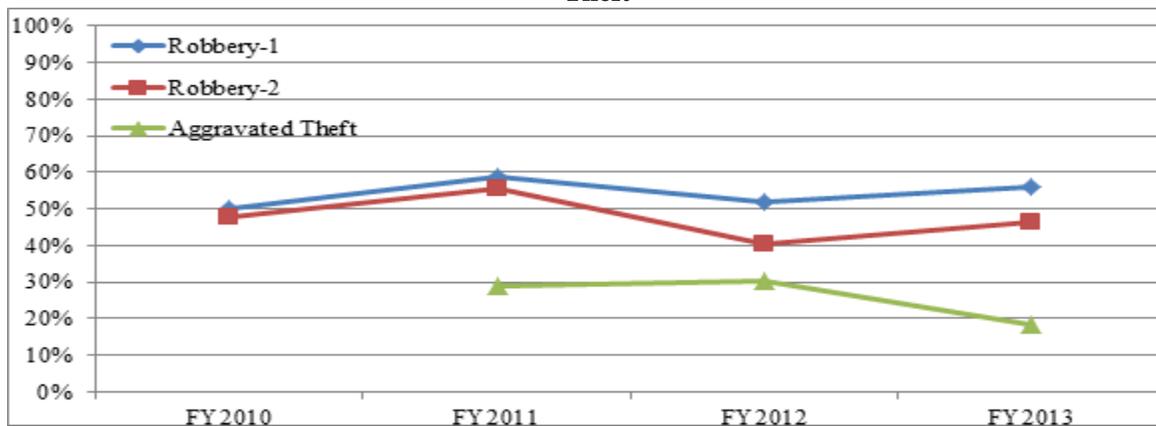
Table 6: Offenders Convicted of Robbery-2, by Race

| | FY2010 | | FY2011 | | FY2012 | | FY2013 | |
|------------------|--------|-------|--------|-------|--------|-------|--------|-------|
| | # | % | # | % | # | % | # | % |
| White | 23 | 35.4% | 25 | 41.0% | 16 | 43.2% | 21 | 38.9% |
| African-American | 31 | 47.7% | 34 | 55.7% | 15 | 40.5% | 25 | 46.3% |
| Other* | 11 | 16.9% | 2 | 3.3% | 6 | 16.2% | 8 | 14.8% |
| Total | 65 | 100% | 61 | 100% | 37 | 100% | 54 | 100% |

Table 7: Offenders Convicted of Aggravated Theft, by Race

| | FY2010 | | FY2011 | | FY2012 | | FY2013 | |
|------------------|--------|----|--------|-------|--------|-------|--------|-------|
| | # | % | # | % | # | % | # | % |
| White | -- | -- | 32 | 61.5% | 57 | 61.3% | 54 | 70.1% |
| African-American | -- | -- | 15 | 28.8% | 28 | 30.1% | 14 | 18.2% |
| Other* | -- | -- | 5 | 9.6% | 8 | 8.6% | 9 | 11.7% |
| Total | -- | -- | 52 | 100% | 93 | 100% | 77 | 100% |

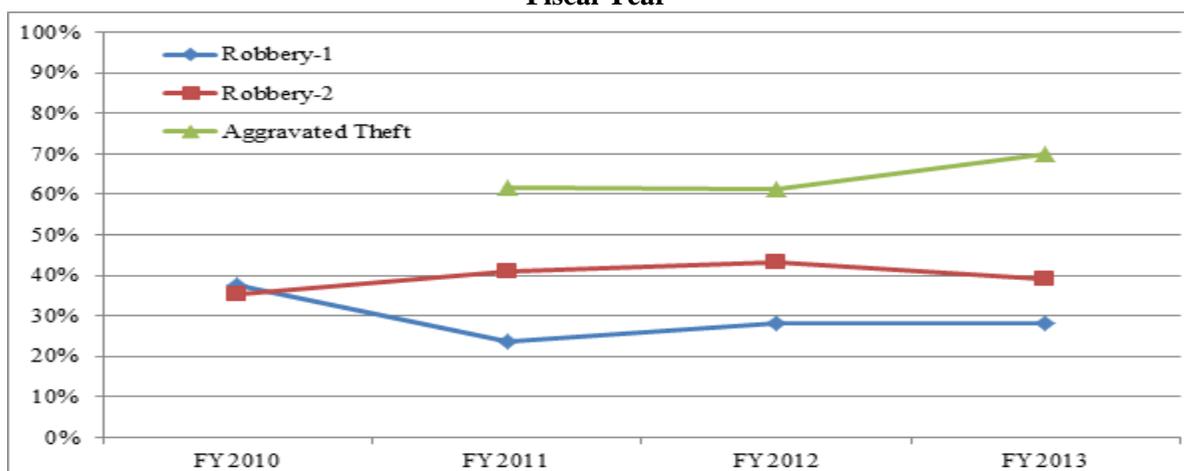
Figure 4: Percent of African-Americans Convicted of Robbery-1, Robbery-2, and Aggravated Theft



The percentage of African-Americans convicted of Robbery-1 has remained higher than that of Robbery-2 for the last four years. Robbery-1 and Robbery-2 convictions show similar trends, with declines observed in FY2012 but a rebound in FY2013. The percentage of African-Americans convicted of Aggravated Theft continues to remain much lower than that of Robbery. Also, a decrease in Aggravated Theft convictions for African-Americans is associated with a rise in Robbery-1 and Robbery-2 convictions in FY2012 and FY2013.

[†] Includes unknown.

Figure 5: Percent of Caucasians Convicted of Robbery-1, Robbery-2, and Aggravated Theft by Fiscal Year



The percentage of Caucasians convicted of Robbery-2 has remained higher than that of Robbery-1 from FY 2011-FY2013. The Aggravated Theft conviction percentage for Caucasians is higher than that of Robbery.

Combined convictions for theft 5th and simple assault were based upon offenders with the same case number and disposition date for both offenses. There may, in fact, have been more cases that resulted in combined convictions but which did not meet the search criteria, so the following numbers may represent an undercount of offenders.

The proportion of individuals convicted of theft 5th and simple assaults has slightly declined over the last four years. White offenders tend to constitute the largest racial group in all four years.

Table 8: Offenders Convicted of Theft 5th/Simple Assault, by Race

| | FY2010 | | FY2011 | | FY2012 | | FY2013 | |
|------------------|--------|-------|--------|-------|--------|-------|--------|-------|
| | # | % | # | % | # | % | # | % |
| Caucasian | 19 | 61.2% | 14 | 58.4% | 13 | 68.4% | 9 | 45.0% |
| African-American | 5 | 16.1% | 5 | 20.8% | 5 | 26.3% | 4 | 20.0% |
| Other/Unknown | 7 | 22.7% | 5 | 20.8% | 1 | 5.3% | 7 | 35.0% |
| Total | 31 | 100% | 24 | 100% | 19 | 100% | 20 | 100% |

Extortion does not appear to be a commonly-used charge. The numbers of charges and offenders convicted appear to be consistent during the year before and years after enactment of Iowa Code §714.3A(2)(a), although the racial distribution varies. However, given the small numbers, this change is likely due to random variation.

Table 9: Charges and Offenders Convicted, Extortion

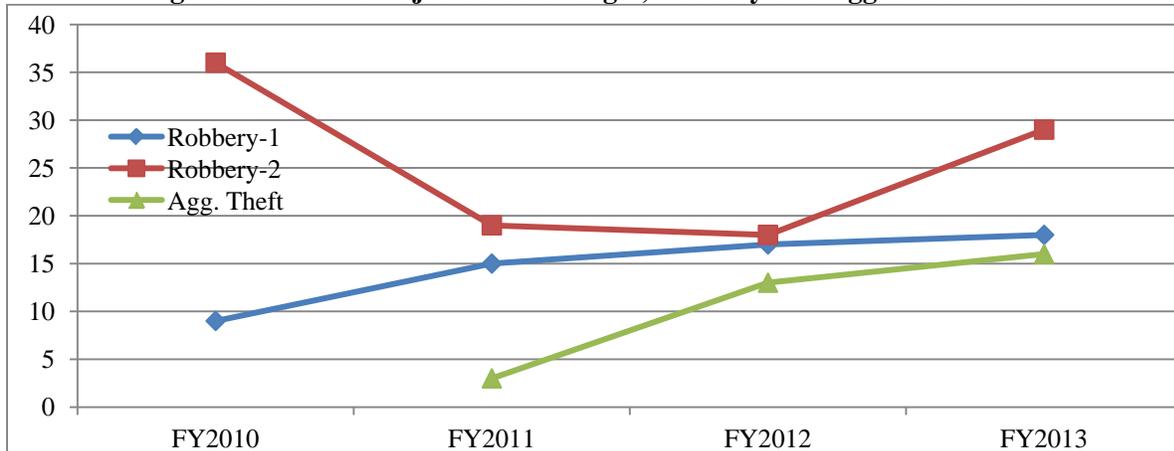
| | FY2010 | | FY2011 | | FY2012 | | FY2013 | |
|------------------|--------|-------|--------|-------|--------|-------|--------|-------|
| | # | % | # | % | # | % | # | % |
| # Charges | 39 | -- | 29 | -- | 41 | -- | 34 | -- |
| Caucasian | 11 | 47.8% | 8 | 44.4% | 16 | 69.6% | 6 | 37.5% |
| African-American | 11 | 47.8% | 5 | 27.8% | 7 | 30.4% | 6 | 37.5% |
| Other/Unknown | 1 | 04.3% | 5 | 27.8% | 0 | 0.0% | 4 | 25.0% |
| Total Offenders | 23 | 100% | 18 | 100% | 23 | 100% | 16 | 100% |

Adjudicated charges for juveniles were also examined for the time periods for robbery 1st and robbery 2nd and aggravated theft. Combined simple misdemeanor assault/theft 5th adjudications were not examined. Until more time elapses, the extent to which the new offense of aggravated theft may affect charging and conviction practices cannot be determined. This is a topic that will continue to be monitored.

Table 10: Juvenile Adjudicated Charges, Robbery and Aggravated Theft

| | FY2010 | FY2011 | FY2012 | FY2013 |
|-------------------------|-----------|-----------|-----------|-----------|
| | # Charges | # Charges | # Charges | # Charges |
| Robbery 1 st | 9 | 15 | 17 | 18 |
| Robbery 2 nd | 36 | 19 | 18 | 29 |
| Aggravated theft | NA | 3 | 13 | 16 |
| Total | 45 | 37 | 48 | 63 |

Figure 6: Juvenile Adjudicated Charges, Robbery and Aggravated Theft



IV. Residential Treatment Backlog

The Department of Corrections' FY2014 budget allocates funds to staff newly constructed bed-space in residential correctional facilities around the state to increase capacity. Below is a breakdown of the number of new beds, by judicial district.

Table 11: Residential Beds to Open by District

| District | # Beds | Bed Type |
|--------------------------|--------|---------------|
| 1 st District | 45 | Female |
| 3 rd District | 42 | Male |
| 6 th District | 26 | Mental Health |
| 7 th District | 39 | Male |
| 8 th District | 25 | Male |
| Total | 177 | |

Table 12: Department of Corrections Facility Completion Dates

| Facility | Completion Date |
|-----------------------------------|---|
| ISP | December 2013; planned move to new facility on January 2014 |
| CBC Facilities | |
| Davenport (7 th JD) | October 2010 |
| Waterloo (1 st JD) | April 2011 |
| Sioux City (3 rd JD) | April 2012 |
| Ottumwa (8 th JD) | June 2012 |
| Cedar Rapids (6 th JD) | November 2008 |
| ICIW Facilities | |
| Buildings A & F | August 2013 |
| Buildings G & Y | September 2013 |
| Building H | October 2013 |
| Building N | August/September 2013 |
| Building P | April/May 2015 |
| Building W | August/September 2013 |
| Building Z | March/April 2015 |

Below is information regarding residential facility capacities, populations, and waiting lists for all residential facilities in the state. Please note the waiting list numbers in the chart include only those offenders who have been approved by the receiving facility—and such offenders may be waiting for placement from prison, county jails, or the community.

The information that follows is based upon the dates identified in the tables. Waiting lists, for instance, may change daily depending upon changes in supervision status.

As of August 8, 2013 there were 279 offenders on waiting lists for residential facilities. This is a decrease of 395 from 2012. The DOC reports daily marginal cost for residential facilities is \$10.73, while the marginal cost for prisons is \$18.25. This translates into a cost differential of \$7.52 per day.

It is somewhat more difficult to determine any cost differences for those waiting placement from the community, as these offenders are likely to be receiving an array of community-based supervision services and levels of intensity, all of which would influence the daily costs within the community. The FY2013 median wait time for this group was eight days, and the average was 16 days. The average was substantially influenced by outliers.

The table below shows residential facility capacities, populations, and the individual facility waiting lists on August 8, 2013, facility population information was drawn on August 29, 2013.

Table 13: State Residential Facilities Population and Waiting List Counts

| JD | Facility | Capacity | 2013 Population | | | 2013 Waiting List | | | 2012 Waiting List | 2011 Waiting List |
|----|--------------------------|----------|--------------------|--------|-------|----------------------|--------|-------|----------------------|----------------------|
| | | | Male | Female | Total | Male | Female | Total | Total | Total |
| 1 | Dubuque | 80 | 64 | 5 | 69 | 6 | 1 | 7 | 19 | 19 |
| 1 | Waterloo | 150 | 131 | 27 | 158 | 12 | 3 | 15 | 35 | 62 |
| 1 | West Union | 48 | 47 | 1 | 48 | 8 | 0 | 8 | 10 | 14 |
| | District Total | 278 | 242 | 33 | 275 | 26 | 4 | 30 | 64 | 95 |
| 2 | Beje Clark Mason City | 51 | 47 | 5 | 52 | 5 | 0 | 5 | 11 | 5 |
| 2 | Curt Forbes Ames | 45 | 38 | 7 | 45 | 13 | 0 | 13 | 12 | 32 |
| 2 | Fort Dodge | 60 | 47 | 9 | 56 | 6 | 0 | 6 | 13 | 26 |
| 2 | Marshalltown | 51 | 43 | 8 | 51 | 7 | 2 | 9 | 10 | 26 |
| | District Total | 207 | 175 | 29 | 204 | 31 | 2 | 33 | 46 | 89 |
| 3 | Sheldon | 30 | 30 | 0 | 30 | 5 | 0 | 5 | 14 | 21 |
| 3 | Sioux City | 57 | 44 | 6 | 50 | 33 | 3 | 36 | 102 | 159 |
| | District Total | 87 | 74 | 6 | 80 | 38 | 3 | 41 | 116 | 180 |
| 4 | Council Bluffs | 71 | 63 | 0 | 63 | 6 | 0 | 6 | 37 | 24 |
| 4 | Council Bluffs Women | 46 | 0 | 11 | 11 | 0 | 3 | 3 | 5 | 5 |
| | District Total | 117 | 63 | 11 | 74 | 6 | 3 | 9 | 42 | 29 |
| 5 | Des Moines Women | 48 | 0 | 51 | 51 | 0 | 5 | 5 | 26 | 23 |
| 5 | Ft DSM Bldg #65 | 40 | 48 | 0 | 48 | 2 | 0 | 2 | 0 | 0 |
| 5 | Ft DSM Bldg #66 | -- | -- | -- | -- | -- | -- | -- | 14 | 10 |
| 5 | Ft DSM Bldg #68 | 80 | 76 | 0 | 76 | 22 | 0 | 22 | 40 | 27 |
| 5 | Ft DSM Bldg #70 | 120 | 132 | 0 | 132 | 55 | 0 | 55 | 64 | 71 |
| | District Total | 288 | 256 | 51 | 307 | 79 | 5 | 84 | 144 | 131 |
| 6 | Cedar Rapids G. Hinzman | 83 | 53 | 29 | 82 | 0 | 3 | 3 | 42 | 43 |
| 6 | Cedar Rapids Lary Nelson | 90 | 98 | 0 | 98 | 11 | 0 | 11 | 18 | 33 |
| 6 | Coralville Hope House | 55 | 52 | 0 | 52 | 9 | 0 | 9 | 59 | 19 |
| | District Total | 228 | 203 | 29 | 232 | 20 | 3 | 23 | 119 | 95 |
| 7 | Davenport Residential | 64 | 57 | 0 | 57 | 9 | 0 | 9 | 27 | 20 |
| 7 | Davenport Work Rel/OWI | 81 | 63 | 22 | 85 | 24 | 1 | 25 | 45 | 95 |
| | District Total | 145 | 120 | 22 | 142 | 33 | 1 | 34 | 72 | 115 |
| 8 | Burlington | 60 | 59 | 0 | 59 | 8 | 0 | 8 | 14 | 6 |
| 8 | Ottumwa | 51 | 45 | 11 | 56 | 13 | 4 | 17 | 57 | 37 |
| | District Total | 111 | 104 | 11 | 115 | 21 | 4 | 25 | 71 | 43 |
| | Statewide | 1,461 | 1,237 | 192 | 1,429 | 254 | 25 | 279 | 674 | 777 |

Waiting list numbers include offenders in the community and in prison. Major groups on the waiting lists in 2013 included probation (362 or 54%), work release (169 or 25%) and federal (92 or 14%).
2011 waiting list drawn on August 23, 2011
2012 waiting list and population drawn on September 12, 2012
2013 waiting list and population drawn on August 8, 2013; 2013 residential population was drawn on August 29, 2013

Source: Iowa Department of Corrections

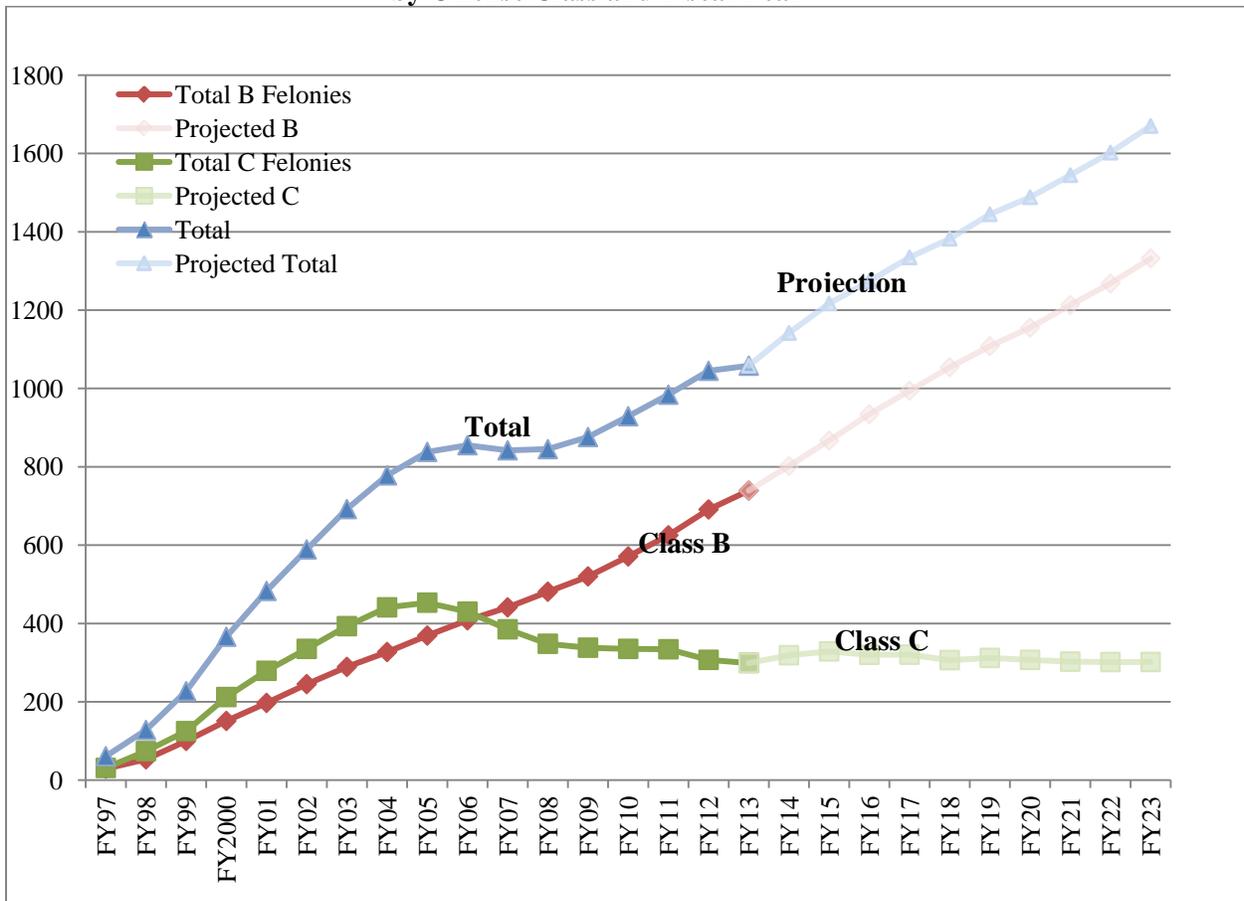
V. 70% Crimes

The Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) Incentive Grant Program encouraged states to increase correctional capacity for adults convicted of certain violent crimes. The funds allowed Iowa to implement sentences which carried mandatory minimum terms by limiting the amount of “earned time” for which offenders were eligible. Originally in Iowa these offenders were allowed only to reduce their maximum terms by 15 percent (hence, “85 percent” sentences). This eligibility requirement was later modified to permit up to a 30 percent reduction of sentence. These sentences, defined in §902.12 of the Iowa Code, will be referred to here as 70% sentences.

The effects of 70% sentences were studied extensively in a report submitted to the Public Safety Advisory Board on September 11, 2013. Condensed findings are provided in this report, but the full analysis can be found on the CJJP website.

Findings from this analysis suggest that while the admission of new prisoners on 70% mandatory sentences has remained relatively stable since FY1998, the number of prisoners in the population serving mandatory 70% sentences has steadily risen (to 1,088 on 6/30/13) and is expected to increase by nearly 30% in the next decade, absent policy reform.

Figure 7: Actual and Projected Inmates in Prison Population Serving Mandatory Sentences, by Offense Class and Fiscal Year



Other Findings:

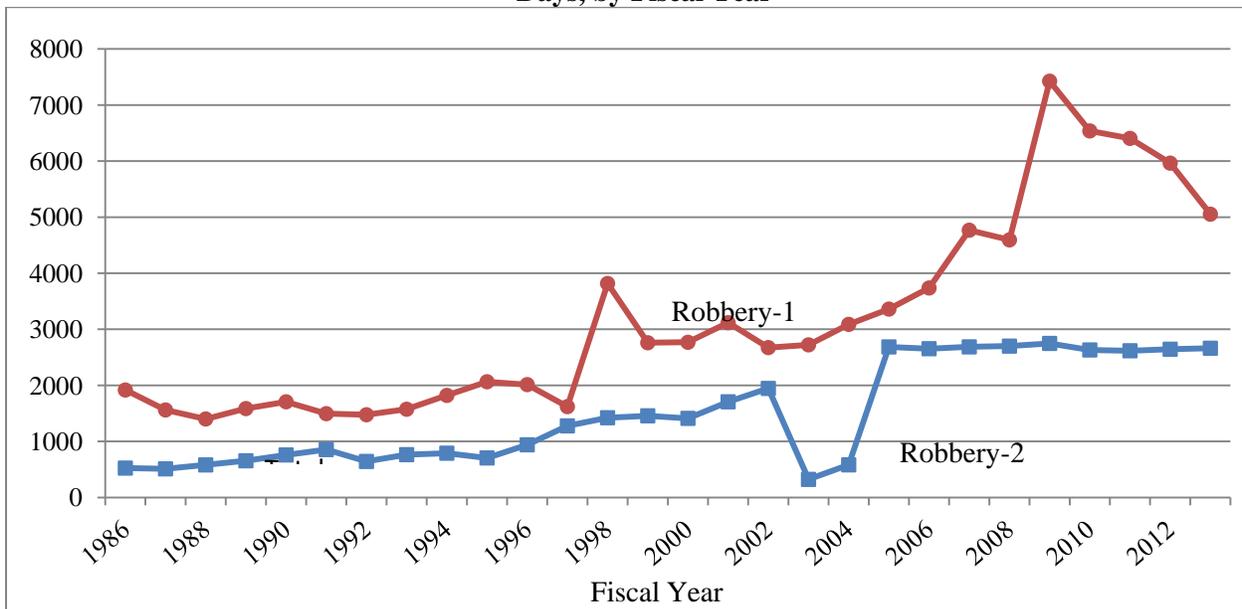
- African-Americans are more likely to be admitted to prison on 70% crimes than Caucasians.
- Offenders age 18-and-under who enter prison are significantly more likely to be admitted to prison on mandatory 70% offenses than other charges.
- Offenders serving 70% sentences have significantly lower risk scores than offenders not serving mandatory terms.
- Offenders serving mandatory sentences have significantly fewer prior convictions than offenders serving non-mandatory sentences.

An additional analysis focused on new offenders admitted to prison after being charged with robbery, with the first offender entering prison on 2/13/1970 and the last on 6/29/2012. This more extensive analysis is presented because robbery offenders constitute such a high percentage of those entering prison under 70% sentences. Robbery is also one of the crimes for which African-Americans are most over-represented in Iowa's prison admissions.

The cohort for this analysis included all new incoming inmates whose *original charges* included either Robbery-1 or Robbery-2, regardless of whether the robbery was the most serious offense charged. These offenders need not have been *convicted* of robbery, but they were originally charged with a robbery offense. The findings of the robbery analysis revealed the following:

- Length-of stay for robbery offenders has dramatically increased since establishment of the 70% mandatory minimum.

Figure 8: Robbery-1 & Robbery-2 Releasee Median Length-of-Stay to First Release, in Days, by Fiscal Year



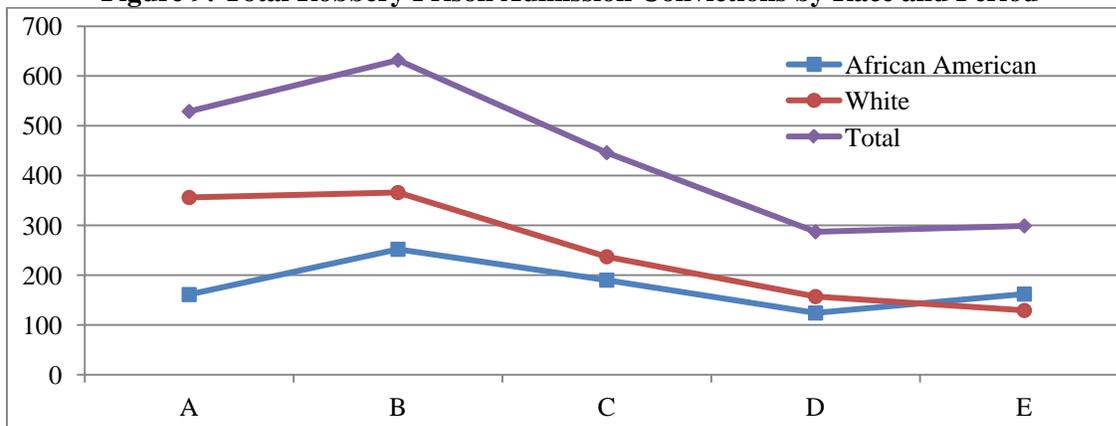
- The number of offenders serving sentences for Robbery-2 has stabilized, while Robbery-1 offenders will continue to increase until such time that releases balance admissions; at this juncture, the first Robbery-1 offenders admitted to prison with 70% mandatory terms are not yet eligible for release consideration.

- Once a sufficient number of Robbery-2 offenders passed their minimum release date, their length-of-stay has remained stable, with release typically occurring midway between their 70% mandatory minimum and their 85% expiration. When released, these offenders were released in much the same manner as Robbery-2 offenders prior to establishment of the 70% sentence.
- African-Americans are overrepresented in the Robbery-1 and Robbery-2 cohorts; on 6/30/12, more than half the offenders serving sentences for Robbery-1 as the most serious conviction offense were African-Americans. Inmates convicted of Robbery-2 were equally divided between African-Americans and Caucasians (including 14 of Hispanic ethnicity).
- Starting in FY2008, more African-Americans than Caucasians have been admitted to Iowa's prisons on robbery convictions.

For the purposes of analysis, the robbery cohort was divided into five groups based upon entry date to prison. These divisions were selected to provide similar sample sizes and also coincide with changes in statutes pertaining to robbery.

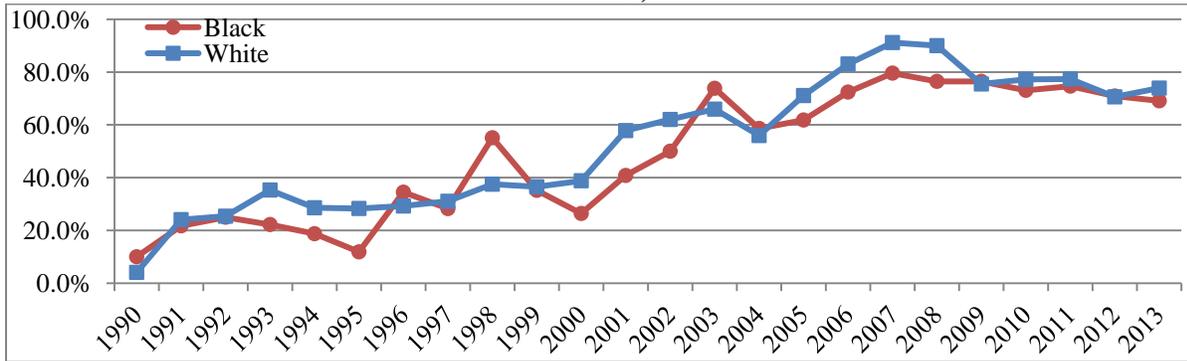
| |
|------------------------------|
| Group A: pre 01/01/90 |
| Group B: 01/01/90 – 12/31/96 |
| Group C: 01/01/97 – 06/30/02 |
| Group D: 07/01/02 – 06/30/07 |
| Group E: 07/01/07 – 06/30/12 |

Figure 9: Total Robbery Prison Admission Convictions by Race and Period



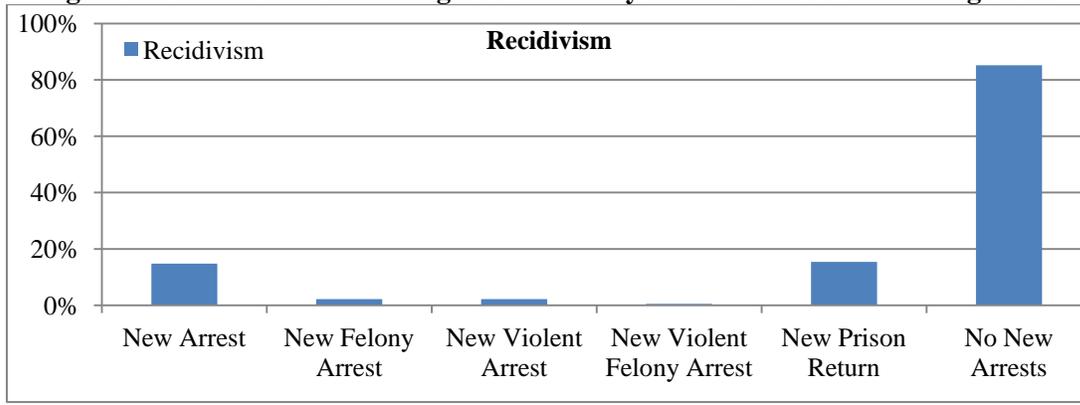
- Since implementation of mandatory sentencing, the percentage of reduced charges from Robbery-1 to Robbery-2 has increased by about 40%. In recent years, charged robbers have entered prison on theft convictions in similar numbers to Robbery-2.
- Of new prison admissions originally charged with robbery, similar percentages of Caucasians and African-Americans entered prison on reduced charges, tentatively suggesting that the plea negotiation process is not racially biased. A more complete racial analysis of charge reduction would require examination of probationers originally charged with robbery.

Figure 10: Percentage of Robbery Charges Reduced by Race and Fiscal Year (FY1990-FY2013)



- Lastly, a relatively small portion of offender in the robbery cohort recidivated between their original 85% discharge date and the establishment of the ‘window’ for release between 70% and 85%, suggesting that early release has little impact on public safety,

Figure 11: Recidivism Occurring Between Early Release and 85% Discharge Date



The findings show that, 17 years after codification of the 70% sentences, the number of convicted robbers in Iowa’s prison population is about the same as when the mandatory term was implemented in 1996. While first- and second-degree robbers were about equally represented in the prison population in 1996, since that time the number convicted of robbery-2 has increased and then has decreased. First-degree robbers will outnumber second-degree robbers sometime in the next five years. This is problematic not just due to the anticipated increase, but also because a high percentage of those imprisoned for Robbery-1 are African-American, exacerbating their over-representation in Iowa’s prison population. This over-representation in the prison population has been an ongoing issue for Iowa[‡]. The results from this analysis suggest that mandatory sentences have a disproportionate impact on the African-Americans and that reducing the proportion of African-Americans in Iowa’s prison system will be extremely difficult absent some modification of the 70% sentences.

[‡] See., e.g., Mauer, Mark, and Ryan S. King, “Uneven Justice: State Rates of Incarceration by Race and Ethnicity,” The Sentencing Project, July, 2007. Iowa was found to have the Nation’s third-highest rate of African-American imprisonment, following South Dakota and Wisconsin. Researchers at the University of Wisconsin-Milwaukee, found Iowa’s rate of African-American male imprisonment the third-highest in the U.S. See Pawasrat and Quinn, “Wisconsin’s Mass Incarceration of African American Males: Workforce Challenges for 2013,” Employment and Training Institute, Univ. of Wisconsin-Milwaukee (<http://www4.uwm.edu/eti/2013/BlackImprisonment.pdf>).

VI. Enhanced Penalty for Domestic Abuse Assault Involving Strangulation

Senate File 93: Domestic Abuse Strangulation

Signed by the Governor: February 15, 2012

Effective: July 1, 2012

Crime Code: 708.2A(5) Domestic Abuse-Choking

This Act enhances the penalty of strangulation in the domestic abuse statute (708.2A) to an aggravated misdemeanor if a person knowingly impedes the normal breathing or circulation of the blood of another by applying pressure to the throat or neck, or by obstructing the nose or mouth of the other person. If the assault causes bodily injury, the person commits a class “D” felony. The offense classified as a class “D” felony under the Act is excluded from the definition of a forcible felony.

In Fiscal Year 2013 there were 468 charges brought under Iowa Code 708.2A(5), with 256 convictions and 44 convictions as originally charged, according to the Justice Data Warehouse (JDW).

Table 14: 708.2A(5) Charges and Convictions, Fiscal Year 2013

| Offense Level | Disposed Charges | Dism/Acq | Convicted | Convicted as Charged |
|----------------------|-------------------------|-----------------|------------------|-----------------------------|
| County Totals | 468 | 149 | 256 | 44 |

There were 230 charges of 708.2A(5) which did not result in a 708.2A(5) conviction. The information below displays the types of convictions received following a 708.2A(5) charge. The most common alternative conviction for 708.2A(5) is 708.2A(4A) (n=114) and 708.2A(2)(d) (n=49). Alternative convictions were largely D Felonies (n=119).

Table 15: 708.2A(5) Charges Resulting in Other Conviction

| Crime Code | Description | N |
|-------------------|--|----------|
| 236.2(A) | DOMESTIC ASSAULT REF. 708.2(1) - 1989 (AGMS) | 1 |
| 708.2(1) | ASSAULT INTENT TO INFLICT SERIOUS INJURY-1978 (AGMS) | 1 |
| 708.2(2) | ASSAULT CAUSING BODILY INJURY-1978 (SRMS) | 10 |
| 708.2(6) | ASSAULT (SMMS) | 7 |
| 708.2A(2)(A) | DOMESTIC ABUSE ASSAULT (SMMS) | 6 |
| 708.2A(2)(B) | DOMESTIC ABUSE ASSAULT CAUSE BODILY INJURY/MENTL ILLNSS(SRMS) | 17 |
| 708.2A(2)(C) | DOMESTIC ABUSE ASSAULT W/INTENT OR DISPLAYS A WEAPON (AGMS) | 8 |
| 708.2A(2)(d) | DOMESTIC ABUSE ASSAULT IMPEDING FLOW OF AIR/BLOOD | 49 |
| 708.2A(3)(A) | DOMESTIC ABUSE ASSAULT - 2ND OFFENSE (SRMS) | 1 |
| 708.2A(3)(B) | DOMESTIC ABUSE ASSAULT - 2ND OFFENSE (AGMS) | 3 |
| 708.2A(4) | DOMESTIC ABUSE ASSAULT - 3RD OR SUBSEQUENT OFFENSE (FELD) | 3 |
| 708.2A(4A) | DOMESTIC ABUSE ASSAULT IMPEDING AIR/BLOOD FLOW CAUSING BODILY INJ (FELD) | 114 |
| 708.4(2) | WILLFUL INJURY - CAUSING BODILY INJURY (FELD) | 2 |
| 708.7(4) | HARASSMENT / 3RD DEG. - 1989 (SMMS) | 2 |
| 723.4(2) | DISORDERLY CONDUCT - LOUD AND RAUCOUS NOISE (SMMS) | 6 |
| Total | | 230 |

Table 16: 708.2A(5) Charges Resulting in Other Conviction by Offense Class

| | N |
|------------------------|-----|
| Aggravated Misdemeanor | 62 |
| Serious Misdemeanor | 28 |
| Simple Misdemeanor | 21 |
| D Felony | 119 |
| Total | 230 |

VII. Recidivism study based on the Anderson ruling

The July 2011 Iowa Supreme Court ruling in Anderson v. State of Iowa allowed felons to earn credit while on probation (even if that probation was revoked). Previously, credit was only granted for time in prison or on parole. This ruling affected offenders who were sentenced on or after July 1, 1996. The Iowa Department of Corrections estimated that the sentences of over 3,000 inmates would have to be recalculated. Because the Anderson ruling allowed the early release of numerous felony offenders, public safety concerns were raised.

Most of the effect of the Anderson ruling and calculation of probation credits occurred in September and October 2011, when 554 offenders were released from prison (275), work release (32), and OWI treatment facility placements (3) or were discharged from parole (243) or probation (1, who was immediately discharged upon revocation due to the probation credits). Most of these would have discharged previously if probation credits had already been a part of time computation. Since then, there is little further impact on the prison population and community-based corrections caseloads. In the month of November 2011 there were only twenty discharges system-wide that may be attributed to probation credit calculations – and only eight of these were prison releases. The effect of probation credits on inmate length of stay was 104 days on average.

There were 257 inmates who were affected by the Anderson ruling and released between 9/1/2011 and 12/8/2011.[§] An examination of new charges for Anderson releases, for the period they would have otherwise remained incarcerated, shows that thirteen offenders incurred new convictions (5%) during this timeframe (eight for felony (3%) and five for misdemeanor offenses (2%).

[§] Not all inmates were included in this analysis due to data system errors.

VIII. Changes to the Purchase or Possession of Child Pornography

House File 2390: An Act relating to obscene material, commercial sexual activity, and human trafficking, and providing penalties and making penalties applicable.

Signed by the Governor: April 4, 2012

Effective: July 1, 2012

Crime Code Modified: 728.12(3)

This Act amended section 728.12(3) Purchase or Possess Medium Depicting Exploitation of a Minor by allowing separate charges to be filed for each child being exploited rather than the number of storage systems, mediums, or images purchased or possessed.

The findings below outline the number of charges and convictions for the above offense prior to (FY2011-FY2012) and after modification of the code (FY2013). This is a topic that will continue to be monitored.

Table 17: 728.12(3) Charges and Convictions, by Fiscal Year

| | Original Code | | Modified Code |
|---------------------|---------------|--------|---------------|
| | FY2011 | FY2012 | FY2013 |
| Charges | 5 | 13 | 25 |
| Convictions | 3 | 7 | 11 |
| Offenders Convicted | 3 | 7 | 10 |

IX. DNA Hits

House File 527: An act requiring a person other than a juvenile convicted of or receiving a deferred judgment for an aggravated misdemeanor to submit a DNA sample and including effective data provisions. This Bill exempts Iowa Code chapter 321 (motor vehicles), Iowa Code section 321J.2 (second offense OWI), and offenses under Iowa Code chapters 716B, 717A, and Iowa Code section 725.7.

Signed by the Governor: May 15, 2013

Effective: July 1, 2014 (FY 2015). This bill does not apply retroactively to offenders currently under supervision

Under the current bill, DNA is collected on individuals convicted of felony crimes. The FBI defines a DNA hit as “a hit that occurs when a confirmed or verified match aids an investigation and one or more of the case(s) involved in the match is unsolved.” In other words, a DNA hit is a database match that links an individual to a crime, or two or more unsolved crimes to each other, when no previous association had been made. Once a DNA hit has been made through the Convicted Offender DNA Index System (CODIS), the information is supplied to the appropriate agency for investigative purpose. DNA hits are to serve as an informative element to aid investigations. DNA hits can be helpful in the exoneration or conviction of an offender. It is difficult to determine how many convictions have been the results of DNA hits as this information is not routinely supplied to the Department of Public Safety.

Historically, DNA hits are received at higher rates for crimes involving burglary (59.1%), sex offenses (12.9%) and theft (12.7%). The number of hits stemming from burglary offenses has decreased over the past three years, although the number of hits for other offenses has remained relatively stable.

Table 18: Iowa DNA Hits by Offense and Fiscal Year

| | FY2011 Hits | | FY2012 Hits | | FY2013 Hits | | Total | |
|------------------|-------------|-------|-------------|-------|-------------|-------|-------|-------|
| | N | % | N | % | N | % | N | % |
| Burglary | 112 | 65.1% | 94 | 57.0% | 64 | 53.3% | 270 | 59.1% |
| Sex Offense | 21 | 12.2% | 23 | 13.9% | 15 | 12.5% | 59 | 12.9% |
| Deaths | 1 | 0.6% | 2 | 1.2% | 7 | 5.8% | 10 | 2.2% |
| Theft | 16 | 9.3% | 26 | 15.8% | 16 | 13.3% | 58 | 12.7% |
| Robbery | 3 | 1.7% | 2 | 1.2% | 5 | 4.2% | 10 | 2.2% |
| Misc. or No Data | 19 | 11.0% | 18 | 10.9% | 13 | 10.8% | 50 | 10.9% |
| Total | 172 | 100% | 165 | 100% | 120 | 100% | 457 | 100% |

Source: Iowa Department of Public Safety

According to the Department of Public Safety, extending to this bill to include aggravated misdemeanants is expected to cost about \$327,000 for FY15 and FY16. Included in this cost is \$185,000 additional sample kits (at \$26.46 each) and the salaries of two FTE positions for criminalists at the crime lab (\$142,000). The DNA kits are provided by the Department of Public Safety (DPS) and are paid from the General Fund appropriation to the Division of Criminal Investigation (DCI).

Further analysis on this topic will be conducted after the bill has gone into effect.

X. Interference with Official Acts

Senate File 384: As amended and passed by the Senate creates a new offense, removal of an officer's communication or control device, and provides a graduated system of penalties for the offense. This Bill also designates lesser penalties for the crime of interference with official acts for actions that result in bodily injury rather than requiring a showing that the offender's actions caused serious injury.

This section is still in development. CJJP completed a correctional impact statement on the proposal, although it is not possible to estimate how many instances of Interference with Official Acts this change would affect. In FY12 there were 4,815 cases of Interference disposed in Iowa courts. Of these, 311 were Aggravated Misdemeanors and 45 were D Felonies. It is possible that the "loosening" of the requirement for proving injury will result in more convictions, but it is not possible to say how many. In FY2012 there were also 2,788 offenders convicted of Interference, with 161 of these being aggravated misdemeanants and 19 being Class D felons. Of the aggravated misdemeanants, 31.7% were African-American. Of the D Felons, 26.3% were African-Americans.

CJJP will monitor the impact of the new provision and report back to the Council next year.